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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Comments of

AIR CANADA

In Response to Department of
Transportation Notice of Proposed
Rulemaking on Computer Reservations
System Regulations

Docket Nos. OST-97-2881,

OST-97-3014, OST-98-4775 -160
and OST-99-5888 -44

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Air Canada respectfully submits the following comments in response to the Department of Transportation ("DOT" or "government") Notice of Proposed Rulemaking (the "Notice") with respect to the Computer Reservations System (CRS) Regulations (the "CRS Rules" or "rules"). Air Canada shall structure its comments in the order that the issues were presented in the Notice.

INTRODUCTION

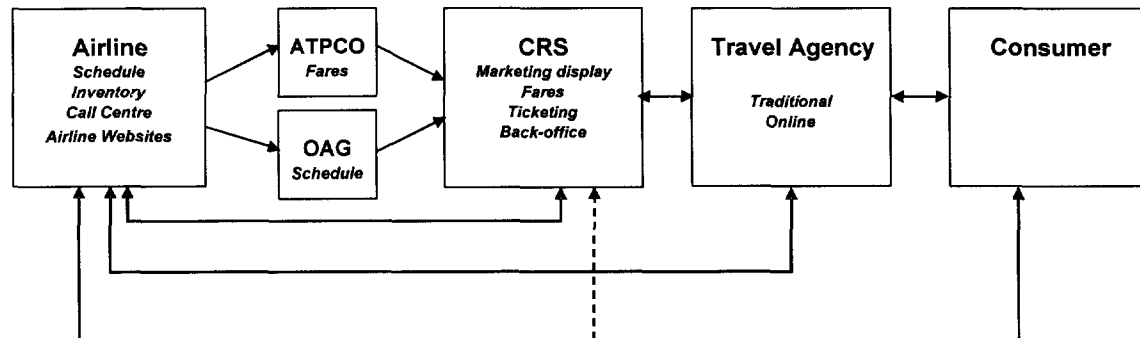
Air Canada is an important North American carrier. It is the 8th largest airline in North America and the 13th largest in the world. We serve 58 cities in the United States with 244 daily flights, and with our code share agreement with United Airlines, we reach an additional 42 cities in the United States. Air Canada is pleased to respond to the Notice.

The CRS Rules were last amended in 1992 and were designed to address issues and concerns in the then current airline distribution marketplace. The CRS Rules took into account the structure, as it existed then, of the air services and CRS industries.

Since that time, market forces, competition and distribution dynamics within the airline industry have evolved significantly. Most carriers have divested ownership positions and no longer manage their major distribution tool, CRS systems. This restructuring has necessitated a need to reform the CRS Rules to address the issues facing the major

players in the distribution of airline services: carriers (airlines), systems (CRS system vendors) and subscribers (travel agencies). Although the following comments often refer to these major players, the purpose is to initiate reform that will ultimately benefit and address the needs of the consumer.

The current airline services distribution model as exhibited below is disintermediating:



In the current industry structure, the four major systems operate as an oligopoly in the United States. These systems have been able to avail themselves of the CRS Rules to impose uncompetitive fees, terms and conditions on participating carriers and subscribers. This unreasonable abuse of market power by the systems is having negative consequences on carriers, subscribers and ultimately consumers.

Unlike the systems, carriers and subscribers work in an environment of near perfect competition and must have the ability to manage their costs and operations. Current CRS Rules, such as the mandatory participation rule, restrict carriers and subscribers from having adequate choice and freedom to move to systems and levels of participation that optimize their operations. In the case of Air Canada, in spite of deployment of all possible policies and measures in the last three years to control costs, our revenues have decreased by 11 percent, while our CRS fees have increased by 15 percent.

Air Canada proposes the principle of “Freedom to Move” for carriers and subscribers on the following aspects, all of which would benefit the consumer:

- Providing an environment conducive to rational and consistent competition throughout the distribution model where market forces can prevail for the benefit of consumers.
- Ensuring that information provided to consumers by travel agencies, whether traditional or online, remains neutral and unbiased regardless of booking source.
- Facilitating airlines, systems and subscribers ability to explore, develop and negotiate relationships, which would add value and optimize distribution services for the benefit of the consumer.
- Freeing airlines and subscribers from the oligopolistic systems stronghold, while nurturing alternative distribution models to evolve in an unencumbered environment.
- Promoting greater competition among the existing systems, and encouraging prospects for new entrants.

Air Canada looks forward to the opportunity to participate in the U.S. DOT Rulemaking Process. We feel the timing is opportune as we are currently exploring opportunities to participate in CRS regulations reform in Canada and in the European Union. The following is a discussion of Air Canada's position with regard to specific sections of the CRS Rules and our proposed opportunities for improvement. This document has been prepared with the collaboration of various departments of Air Canada, particularly the Product Distribution department.

1. THE SCOPE OF THE RULES

Rule:

Section 255.2 - The current rules cover systems owned or marketed by airlines that are used by travel agencies to obtain information, make bookings, and issue tickets for passenger air transportation.

Government Proposal:

The proposal is to expand the rule to apply to both airline and non-airline owned systems.

Comment Requested:

Yes

Air Canada Position:

Air Canada agrees with the government's proposal to apply the rules to both airline and non-airline owned systems for the following reasons:

- ***Factual and Policy Issues:***

Two of the major systems (Sabre/Apollo) no longer have airline ownership. Therefore, the present rules need to be changed to include these systems within their scope.

- ***Detailed Information on Necessity of the Rule:***

Changes are necessary to ensure that *all* systems compete under the same set of rules and policies.

- ***Cost/Benefit Estimates:***

The rules must be applied equally to all systems to ensure non-airline owned systems do not have an advantage over airline owned systems. The consumer will benefit since this will ensure that services offered by travel agencies are consistent.

2. DEFINITIONS

a) System

Rule:

Section 255.3 - The current definition of “system” is a computerized reservations system offered by a carrier or its affiliate to subscribers that contain information about schedules, fares, rules or availability of other carriers and provide subscribers with the ability to make reservations and to issue tickets, if it charges any other carrier a fee for such services. As stated in the previous section, this definition may be amended to include non-airline owned systems.

Government Proposal:

The proposal is to exclude from the definition of “system” the Internet sites used by travel agencies to access information and booking services.

Comment Requested:

Yes

Air Canada Position:

Air Canada agrees that the rules should not apply to an airline’s own Internet sites that have been set up for use by consumers and travel agents. Such sites provide electronic alternatives to systems for travel agencies, thus promoting healthy competition.

- ***Factual and Policy Issues:***

Internet sites that provide access by travel agencies and consumers to air travel information and booking services do not present a potential for anticompetitive behaviour and deceptive conduct. To the contrary, they provide much needed competition in that area to reduce the market power of systems.

- ***Detailed Information on Necessity of the Rule:***

Airlines must be able to use the Internet freely and extensively in their distribution strategies. Many other businesses, such as booksellers, electronics and automotive parts, have already capitalised on the shift in consumer behaviour towards purchasing goods and services online at discounted prices. Airlines, like any other business, must be able to adapt to such changes in consumer behaviour, and as such, must be innovative in their use of the Internet to find other means, besides the systems, of informing the public of their products and availability.

- ***Cost/Benefit Estimates:***

Consumers will benefit from the added competition that such Internet sites bring, since airlines are able to offer lower fares to consumers due to a lower cost structure.

b) System Owner

Rule:

Section 255.3 - The current definition of “system owner” is any airline that owns at least five percent of a system.

Government Proposal:

There is no proposal provided.

Comment Requested:

Yes

Air Canada Position:

Air Canada proposes that the definition of “system owner” be amended to cover only airlines with a more significant ownership interest, e.g. 25% to 34% ownership.

- ***Factual and Policy Issues:***

The current rule imposes added obligations to system owners. The five percent ownership interest currently established by the CRS Rules seems insufficient to warrant the application of such added obligations.

- ***Detailed Information on Necessity of the Rule:***

Air Canada recommends redefining “system owner” due to the added airline obligations such as parity clauses and mandatory participation requirements.

- ***Cost/Benefit Estimates:***

System owners are subject to higher costs associated with these obligations.

c) Subscriber

Rule:

Section 255.3 – Subscriber is defined as a “ticket agent that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system”.

Government Proposal:

The proposal is to strike the word “neutral” from the definition.

Comment Requested:

Yes

Air Canada Position:

Air Canada disagrees with the government proposal to remove the word “neutral”, for the reasons given below.

Secondly, although not raised in the Notice, Air Canada proposes that the DOT takes this opportunity to strengthen the definition of “subscriber” to require that each travel agency have a unique and recognisable identifier that can be decoded by any airline, such as a Reservation Services Provider (“RSP”) number.

- ***Factual and Policy Issues:***

It is in the consumer’s best interest that subscribers remain neutral. This is particularly important for online travel agencies, where there may not be the opportunity for the consumer to communicate preferences. Subscribers could be in a position to introduce bias without consumer awareness.

- ***Detailed Information on Necessity of the Rule:***

It is important to all parties (airlines, consumers, government and systems) that subscribers be neutral. Otherwise, the recommendations made by the subscriber to the consumer may be based on which recommendation will provide greater revenue to the subscriber through incentives, rather than which recommendation will most benefit the consumer.

On the issue of adequate identification of subscribers, all subscribers should have a unique and recognisable identifier such as an RSP number since airlines must know who is originating a booking and affecting their inventory.

- ***Cost/Benefit Estimates:***

When subscribers are not neutral, the result can be lost revenue to airlines and excess costs to consumers.

Non-identifiable agencies (including non-Airlines Reporting Corporation “ARC” agencies) increase the cost of distribution of air travel because they perform a high percentage of non-value added booking transactions, the so-called “passive bookings”.

3. THIRD PARTY HARDWARE AND SOFTWARE

Rule:

Section 255.9 - The rule allows subscribers to obtain their own equipment for system access. Any system or database with airline information can be accessed from “customer-owned” equipment. The rule does not prohibit a system from blocking subscriber access to other systems if the equipment is “system-owned”.

Government Proposal:

The proposal is to readopt the existing rule with one change: elimination of the provision that allows a system to block subscribers from using system-owned equipment to access other systems and databases. (Section H3 paragraph 14)

Comment Requested:

Yes

Air Canada Position:

Air Canada agrees with the government's proposal to eliminate the provision that allows a system to block travel agencies from using equipment owned by the system to access other systems and databases.

Air Canada also believes that the system owning the equipment should not be allowed to charge unreasonable fees for the travel agent to access alternative systems.

- ***Factual and Policy Issues:***

Enabling subscribers to access different systems and travel suppliers from one computer would encourage competition among the systems as well as between the systems and alternative electronic booking sources.

- ***Detailed Information on Necessity of the Rule:***

The current system limitation presents burdens to subscribers and inhibits their flexibility to use alternative systems. Flexibility is further impeded by the systems' use of productivity pricing.

- ***Cost/Benefit Estimates:***

Consumers will benefit from the travel agents' ability to use one computer to access all systems and available airline options, including direct access to an airline's own internal reservations systems, since they will be able to offer a wider range of services at the lowest cost. It will also promote increased competition between the various systems and non-traditional distribution channels.

4. CONTRACT CLAUSES RESTRICTING AIRLINE CHOICES ON SYSTEM USAGE

Rule:

Section 255.6 - This rule prohibits systems from enforcing parity clauses except to airlines that own a system or market a system.

Government Proposal:

The proposal is to readopt the rule prohibiting the enforcement of parity clauses, subject to the exception for airlines owning or marketing a system. However, if the proposal to end the mandatory participation requirement is adopted (section 5), this may require that the parity clause rule be changed to eliminate that exception.

Comment Requested:

Yes

Air Canada Position:

Air Canada disagrees with the government's proposal to readopt the parity clause rule. Air Canada strongly supports eliminating the exception to the rule prohibiting parity clauses. Airlines should be able to participate at whatever level best suits their needs, regardless of ownership or marketing relationships.

- ***Factual and Policy Issues:***

Parity clauses could keep an airline from pursuing distribution channels which are the most efficient and least costly to the consumer.

- ***Detailed Information on Necessity of the Rule:***

The elimination of parity clauses is necessary to limit anti-competitive behaviour by the systems and would promote competition among the systems resulting in efficiencies that will benefit the consumer.

- ***Cost/Benefit Estimates:***

Parity clauses lead to higher prices for the consumer since they have a significant cost impact on airlines. Airlines are forced either to buy more services than they wish from some systems which results in additional development costs, or to buy fewer services from some systems than they wish, which may limit their competitiveness with other airlines. As well, parity clauses cause a loss of leverage and freedom to negotiate on the part of the airlines, and lessen competition among the systems.

5. THE MANDATORY PARTICIPATION RULE

Rule:

Section 255.7 - The mandatory participation rule requires airlines with at least five percent ownership interest in a system (a "system owner") to participate in competing systems, providing that the other systems' terms for participation at the same level are commercially reasonable.

Government Proposal:

The proposal would eliminate the mandatory participation rule, re-adopt it or extend it to include airlines that market a system.

Comment Requested:

Yes

Air Canada Position:

Air Canada agrees with the government's proposal to eliminate the mandatory participation rule. Air Canada does not agree with the alternative to re-adopt or extend the rule.

- ***Factual and Policy Issues:***

System owner airlines are forced to participate in all systems and at an equal level of functionality.

- ***Detailed Information on Necessity of the Rule:***

Eliminating the mandatory participation rule is necessary to foster competition among the systems and support efficiency among all airlines. Eliminating the rule will also improve the ability for individual airlines to negotiate for better terms with the systems. Ending the requirement would promote fair competition and allow market forces to discipline CRS terms for airline participation which would in turn benefit the consumer.

- ***Cost/Benefit Estimates:***

Mandatory participation clauses lead to higher prices for the consumer since they have a significant cost impact on airlines. System owner airlines are forced to buy more services than they wish from some systems, which results in additional development costs. As well, mandatory participation clauses cause a loss of leverage and freedom to negotiate on the part of the airlines, and lessen competition among the systems. Excessive distribution costs are ultimately passed on to the consumer through higher ticket prices.

6. RULES BARRING DISPLAY BIAS

a) Maintaining the Prohibition against Display Bias

Rule:

Section 255.4 - Systems are prohibited from biasing their displays. The rule does not stipulate how a system must display airline services.

Government Proposal:

The government proposes to readopt the current prohibition concerning availability display bias.

Comment Requested:

Yes

Air Canada Position:

Air Canada is in agreement with the government's position. We should continue to prohibit display bias based on airline identifier, in order for all airlines to remain competitive.

Although not asked to comment, Air Canada continues to support the travel agents' choice for European or North American displays based on location. Air Canada recommends that the current North American availability display continue to be the default choice for travel agencies in North America. The North American display which

favours online connections over interline is preferential in the North American market since online travel generally results in lower fares and more seamless service for the consumer.

- ***Factual and Policy Issues:***

Screen positioning has a significant impact on the travel agents (and consumers) choice of carrier. Travel agents tend to book the first flight displayed by a system. The systems can use selection criteria based on other factors (e.g. departure time, stops, etc.); however, the selection criteria must be applied equally for all airlines and displays.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary because it ensures all carriers are displayed equally to travel agents. Since screen positioning significantly impacts which airline travel agents are likely to choose, regulating displays so that they remain unbiased will ensure consumers receive optimal price and service.

- ***Cost/Benefit Estimates:***

Air Canada agrees that if unfair screen positioning bias occurs, some airlines are at risk of losing million of dollars of revenue. The North American rules are beneficial to consumers because they offer improved fares and service. Consumers travelling online typically obtain smoother service than they would by using interline connections.

b) Screen Padding

Rule:

Section 255.4 - The rule allows systems to limit the number of listings given to code share services, so long as the service is listed at least once under each partner's code. The rules do not bar a system from displaying all possible code combinations for code share flights.

Government Proposal:

The proposal is to consider various options for screen padding brought forward by airlines and systems, e.g. limiting the number of times that code share services are shown by displaying one operating flight a maximum of two times.

Comment Requested:

Yes

Air Canada Position:

Air Canada proposes the following. The operating airline code must always be present in the code share display. A maximum of one marketing carrier code can appear at random in code share displays when more that one code share partner is present.

Further to this, Air Canada recommends that systems be mandated to develop a new display which lists all marketing (code share) carriers on a particular flight. This secondary display would show travel agents the full selection of marketing carrier choices on the operating flight, allowing them to book using the appropriate airline code.

- ***Factual and Policy Issues:***

When repetitive code share services occupy too much of a display, subscribers have difficulty finding alternative flights for their customers.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary because it gives a greater choice of true flight options rather than repeating the same operational flights under different airline codes. Therefore, travel agents and consumers will benefit since more competitive choices will be offered.

- ***Cost/Benefit Estimates:***

Limiting screen padding results in more flight alternatives being offered to the consumer. It ensures that all airlines are treated equally with respect to screen positioning and it assures that airlines have more opportunity (random) to display in a preferential screen position. It will also ensure that the operating carrier is always listed and that the code share services can be displayed.

c) Biasing Software Provided by Airlines

Rule:

There is no rule that addresses the issue of airlines providing biasing software to travel agencies.

Government Proposal:

The proposal would prohibit any airline from providing software to travel agencies that would bias the system display in favour of that airline.

Comment Requested:

No

Air Canada Position:

Although not requested to comment, Air Canada is in agreement with the government's proposal to prohibit any airline from providing software to agencies that would bias the display in favour of that airline.

- ***Factual and Policy Issues:***

Any carrier is likely to dominate a travel agency regional airline market with screen biasing software. Airline created screen bias can be just as deceptive to consumers and harmful to airline competition. Airlines that are hosted in a CRS

used by travel agents have an unfair advantage in that they have the technical ability to have biasing software developed for that particular system.

- ***Detailed Information on Necessity of the Rule:***

A rule is necessary to ensure that the consumer gets unbiased access to the best schedule and fares. Biasing displays causes consumer harm and hinders rival airlines from competing on the basis of fares and quality of service.

- ***Cost/Benefit Estimates:***

It is beneficial for the consumer to obtain maximum choice for the best schedule and fares.

d) Travel Agency Displays

Rule:

There is no rule that regulates travel agencies from creating biased displays.

Government Proposal:

There is no proposal provided.

Comment Requested:

No

Air Canada Position:

Although not requested to comment, Air Canada agrees that it is not necessary to regulate travel agencies creation of biased displays.

- ***Factual and Policy Issues:***

Travel agencies who provide biased advice risk losing customers. Therefore, market forces will ensure that travel agencies will not unduly bias their displays.

- ***Detailed Information on Necessity of the Rule:***

A rule is not necessary.

- ***Cost/Benefit Estimates:***

Consumers benefit because the travel agencies are subject to market forces.

7. EQUAL FUNCTIONALITY

Rule:

Section 255.4 - Systems must provide equal access to enhancements and equal treatment on the loading of information for all airlines. Systems are barred from using default features that favour an airline system owner.

Government Proposal:

The proposal is to readopt these rules without change.

Comment Requested:

No

Air Canada Position:

Although not requested to comment, we agree that equal access to enhancements and equal treatment on the loading of information provided by each airline is required. Continuing the rule that bars systems from using default features to favour system-owner airlines is necessary.

- ***Factual and Policy Issues:***

Systems must provide equal information and update their systems equally for all airlines as they do for their system owners.

- ***Detailed Information on Necessity of the Rule:***

This rule is necessary since it puts all carriers on an equal playing field.

- ***Cost/Benefit Estimates:***

This rule promotes fair competition among the airlines. The consumer benefits by having the most current and accurate airline information.

8. BOOKING FEES

a) Ending the Prohibition against Discriminatory Booking Fees

Rule:

Section 255.6 - The rule prohibits discriminatory booking fees and requires systems to provide sufficient supporting information to accurately audit invoices related to segment activity. The rule does not limit the level of booking fees. No system may discriminate among participating carriers in the fees for participation in its system, or for system-related services.

Government Proposal:

The government proposes to eliminate the prohibition against discriminatory fees.

Comment Requested:

No

Air Canada Position:

Air Canada agrees with the government proposal to eliminate the prohibition against discriminatory fees. Airlines should be able to negotiate all booking fees on a CRS by CRS basis.

- ***Factual and Policy Issues:***

Airlines are presently unable to negotiate terms and fees with systems due to current regulations. The systems have an oligopoly that has resulted in continually increasing and uncompetitive fee structures. The added burden of excessive booking fees paid by the airlines is ultimately passed to the consumer.

- ***Detailed Information on Necessity of the Rule:***

Many airlines view excessive booking fees as the most important unresolved distribution problem that needs to be addressed. The transaction-based business model where the airline is responsible for all booking fees has resulted in excessive costs to the airlines. Travel agencies have no incentive to favour lower cost systems and are in fact encouraged to generate excessive transactions through productivity-based subscriber contracts. The cost of the resulting inefficiencies of this business model is borne by the consumer and the airlines.

- ***Cost/Benefit Estimates:***

Eliminating the discriminatory booking fee rule would allow market forces to prevail, resulting in more moderate booking fee costs. In the current economy, airlines are very cost sensitive. The burden of excess system fees are contributing to financial difficulties within the airline industry, leading to fewer carrier choices for consumers due to airline bankruptcies.

b) Proposals Requiring Reasonable Fees, Fees Based on Costs, or Fees Limited by Overall Inflation Rates

Rule:

There is no current rule, however, a number of airlines are seeking rules to limit booking fees by requiring the fees to be reasonable or related to costs by barring fee increases exceeding the overall rate of inflation.

Government Proposal:

There is no proposal provided.

Comment Requested:

No

Air Canada Position:

Although not requested to comment, Air Canada believes a review of booking fees is required. Air Canada supports the exploration of alternative pricing models that are not necessarily transaction driven, but rather result in reasonable booking fees when value-added services are provided. If airlines were given the flexibility to negotiate booking fees on an individual basis, market forces would set reasonable booking fees and eliminate the need for government regulations to be responsible for setting fees based on costs, inflation rate, etc. Air Canada also agrees with DOT's comments on the difficulty

of enforcing such rules regulating the booking fee levels, since any challenges by an airline could prove to be very cost-prohibitive.

Air Canada is also in favour of a “zero fee” proposal which would remove the onus from airlines to pay CRS booking fees.

Another option might be to implement a “zero fee” proposal for basic booking services, but where airlines would pay a premium to any system in which it chooses to participate in at a higher level of functionality than basic availability. The airlines would still be able to negotiate the premium.

- ***Factual and Policy Issues:***

Currently, the systems increase fees at rates far beyond the rate of inflation and with no regard to the overall profit margins facing airlines. Rate of inflation is not a good basis for increase. The cost of technology has not increased at the same rate as inflation. Air fares also have not increased at the rate of inflation. However, system prices continue to rise at an accelerated pace in the current model.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary to control costs in the airline industry. When market forces and competition aren't there to mitigate costs, airlines and consumers suffer which then decreases the viability for some routes and services. Furthermore, airlines may be pushed towards bankruptcy leaving the consumer with even less choice of service.

- ***Cost/Benefit Estimates:***

This rule is advantageous because reasonable and affordable booking fees are essential to controlling airline costs and ultimately the costs borne by consumers. Booking fees have a material impact on airline operating costs.

c) Excluding Transactions from Booking Fee Liability

Rule:

Section 255.6 - The rules allow each system to establish its own fee structure as long its fees are non-discriminatory.

Government Proposal:

There is no proposal provided.

Comment Requested:

No

Air Canada Position:

Although not requested to comment, Air Canada proposes that if airlines continue to pay some sort of booking fee, then the fee should only apply to bookings that result in a ticket being issued. Therefore, a rule excluding certain non-value added transactions from booking fee liability is required. Examples of non-value added transactions include but are not limited to:

Passive Segments: Airlines should have the option to specify whether or not they want travel agencies to create passive segments using their carrier code. Those airlines that choose to allow agencies to create passive segments using their carrier code should only be charged if those segments are ticketed.

Fictitious, duplicate bookings, and churn: Fees for these non-value added transactions would be eliminated if airlines were only charged for ticketed segments.

Cancellation credits: Some systems do not provide credits when segments are cancelled within a certain number of hours prior to departure. Since a significant number of bookings are changed or cancelled within this time period, airlines are not receiving some credits that they are entitled to. Therefore, a rule that enforces that credits are given for cancellations prior to departure regardless of time is required.

Dispute Resolution: Air Canada has experienced difficulty when disputing system charges. The systems are generally reluctant to investigate billing issues. Therefore a policy is required that addresses how billing disputes can be contested and mediated.

- ***Factual and Policy Issues:***

The current CRS booking fee model encourages travel agents to book allegedly non-value added and fraudulent segments in order to meet productivity pricing quotas.

Airlines have been forced to acquire and/or develop audit tools to identify and validate system fees and transactions. These tools are expensive to purchase, deploy, maintain, and manage which leads to higher costs.

Rather than resolve disagreements through negotiations, systems have threatened termination of an airline's participation in their system.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary to control non-value added costs in the airline industry. These non-value-added transactions represent a major component of booking fee expenses borne by airlines and consumers.

- ***Cost/Benefit Estimates:***

The rule is beneficial because it encourages efficient use of the systems and discourages non-value added transactions. Non-value added transactions adversely affect airlines and consumers because they reduce the inventory

available to consumers and impact customer service due lack of choice in available flights. This further affects airlines through higher segment fees and ultimately affects the consumer since they may be forced to book alternate services from the one they originally want due to inventory spoilage.

d) Booking Fee Bills

Rule:

Section 255.6 - The current rule requires systems to provide participating airlines with detailed billing information that enables the airlines to audit the accuracy of the segment related activity on their invoices. The rule allows systems to charge airlines for the detailed information on magnetic tape.

Government Proposal:

There is no proposal provided.

Comment Requested:

No

Air Canada Position:

Air Canada proposes that systems should provide additional information required by airlines to audit their bills at no charge.

- ***Factual and Policy Issues:***

As a matter of principle, suppliers should be required to provide clear and complete information necessary to support their invoices at no charge. Paying for billing data is contrary to any established business practice anywhere in the world. Additionally, in some cases information on the billing information is not adequate for audit purposes (e.g. agency/airline/web identifier is difficult to decode).

- ***Detailed Information on Necessity of the Rule:***

Since booking fees are the most significant portion of system fees, airlines must have the ability to thoroughly audit their invoices.

- ***Cost/Benefit Estimates:***

The benefit of this rule is that it ensures that airlines obtain information that is valuable to audit the accuracy of their bills. However, the rule could be more effective if the information was provided at no charge (paying for billing data is highly inequitable) and if the bills included additional information.

9. MARKETING AND BOOKING INFORMATION

Rule:

Rule 255.10 - The rule currently requires each system to make marketing and booking data available from bookings generated by its system users. Participating airlines can buy this data which covers bookings on all airlines. The data is usually called MIDT (Marketing Information Data Tapes).

Government Proposal:

The government proposes to restrict the type of MIDT data being sold to airlines since it is used to implement override commission programs. It feels that the availability of MIDT has adversely affected airline competition and has interfered with the travel agencies' ability to book the airlines who best meet their customers' needs.

The government is unwilling to propose a rule regulating the systems charges for the data tapes.

Comment Requested:

Yes - The government has asked for comments on the following proposals that would restrict the availability of MIDT:

- 1) remove the identification of individual travel agencies from MIDT;
- 2) removing non-consenting airlines from MIDT;
- 3) restrict MIDT from including US domestic markets; and
- 4) delay the availability of MIDT for future travel until the passenger has travelled.

Air Canada Position:

Air Canada does not support such changes to current rules affecting the sale of MIDT since such changes would decrease the effectiveness of the data. The data supports an airline's ability to provide enhanced options and better value pricing for the consumer.

- ***Factual and Policy Issues:***

Subscribers have complained that airlines use MIDT to formulate subscriber incentives, while airlines have indicated the importance of this data to conduct marketing research, route development, pricing and revenue management purposes.

Air Canada's use of MIDT to formulate subscriber incentives is very limited and non-unilateral basis to formulate subscriber incentives. Rather, Air Canada bases subscriber incentives on "flown revenue" data obtained from internal sources not related to CRS MIDT "sales" data. In addition, Air Canada does not get the full benefit from MIDT in our domestic market since most new entrants use alternate booking channels, which are not included in MIDT.

- ***Detailed Information on Necessity of the Rule:***

Complete MIDT information is necessary for Air Canada since it is used for strategic route planning and sales strategy planning. Airlines have invested time and resources to be able to develop and analyse this data source. MIDT is a critical tool used by airlines for future planning and strategic direction. The loss of this information would limit the airlines' ability to respond to market demands and consumer needs. All four proposals made by the government would reduce the effectiveness of MIDT thereby incurring incremental costs to the airline in the need to develop alternate tools and processes to analyse the needs of the market.

- ***Cost/Benefit Estimates:***

Removing individual travel agency identifiers or removing non-consenting airline data from MIDT would make the data far less useful. However, restricting US domestic market data would not greatly impact Air Canada, since most of the Canadian domestic competition is not included in MIDT today.

10. TRAVEL AGENCY CONTRACTS

a) Shortening the Maximum Term of Travel Agency Contracts

Rule:

Section 255.8(a) - no subscriber contract may have a term in excess of five years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination.

Rules were further strengthened by allowing systems to offer five-year subscriber contracts only if three-year contracts were also offered.

Government Proposal:

The proposal is to consider the following three options:

- 1) readopt the current rule;
- 2) fixing the maximum term to three years; or
- 3) adopting the EU rule (one year contract plus 90 day exit clause after one year).

As well, the proposal recommends continuing the prohibitions against roll-over clauses.

Comment Requested:

Yes – Comments are requested on the following three points:

- 1) The maximum term that should be required;
- 2) How true is it that agencies still rely predominantly on one system; and
- 3) Whether five-year contracts and liquidated damages keep travel agencies from switching systems before the end of the term.

Parties commenting on subscriber contact proposals should discuss how effective the EU rule has been and how it has affected the travel agencies' ability to switch systems, the systems' ability to operate profitably, and the level of booking fees charged airlines.

Air Canada Position:

- 1) Air Canada proposes a maximum contract length of one year and that the agency be allowed to terminate its contract with 90 days' notice after the first year.
- 2) A high percentage of agencies rely on one system (in Air Canada's case the majority of high-value corporate bookings are produced by agencies that are using the same system).
- 3) The five-year contracts and liquidated damages for early termination make it too expensive for subscribers to terminate their contracts before the end of the term.

- ***Factual and Policy Issues:***

Travel agencies, unlike airlines, can choose between systems and systems compete for travel agency customers which usually disciplines the price and quality of services offered to travel agencies.

A number of agencies receive their systems without charge or even receive cash bonuses and incentives for choosing one system over another. Subscribers receive better contract terms and incentives for signing five-year contracts.

- ***Detailed Information on Necessity of the Rule:***

Shorter contract terms are needed to ensure greater distribution flexibility in the travel industry. This will allow subscribers greater flexibility to choose the preferred booking channel (e.g. lowest cost) to meet the needs of consumers.

- ***Cost/Benefit Estimates:***

One year contract terms would give travel agencies freedom to move to lower cost distribution channels, thus giving the consumer more choice. It may also provide benefit by attracting more systems providers, which would break the CRS oligopoly and encourage greater competition.

b) Contract Clauses Fixing Damages

Rule:

Rule 255.8 (b) – No system may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, subscriber contracts cannot: 1) include minimum use clauses, 2) force a subscriber to take the same amount of system hardware (e.g. CRT's/printers) as they have contracted with any other system, or 3) force a subscriber to produce the same volume of bookings as they have contracted with any other system.

Government Proposal:

The proposal would limit subscriber damages for early termination of a system contract, and bar systems from demanding liquidated damages that reflect booking fees allegedly lost by the system due to the subscribers' use of a different system.

Comment Requested:

Yes

Air Canada Position:

Air Canada proposes that termination fees must be limited to the non-discounted amount for system-owned equipment. Liquidated damages based on potential booking fees lost must not be allowed to exceed the non-discounted value of the system-owned equipment in cases of early termination.

- ***Factual and Policy Issues:***

System contracts still contain terminology that deters subscribers from using another system or alternative systems (productivity agreements, liquidated damages, termination fees, etc.).

Liquidated damages are not realistic since it is an artificial number of segments proposed by the agency/system. There is no guarantee that an agency would be able to achieve the segment productivity.

The provisions limit competition, maintain the system's market power, and keeps airlines from bypassing the systems. They also inhibit innovation by discouraging firms from developing new services and products that travel agents could use as alternatives to the systems.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary to allow subscribers greater flexibility to choose the preferred booking channel (e.g. lowest cost channel) to meet the needs of consumers.

- ***Cost/Benefit Estimates:***

Travel agencies would not be penalised by systems for making bookings on the Internet or not meeting productivity agreements.

c) Travel Agency Equipment Additions

Rule:

There is no current rule regarding travel agency equipment additions.

Government Proposal:

The proposal is to prohibit multiple contracts when an agency adds equipment.

Comment Requested:

Yes - whether secondary contracts for additional equipment significantly interfere with an agency's ability to switch systems or use multiple systems. In the alternative, is the rule required since an agency can then purchase its own equipment?

Air Canada Position:

Air Canada proposes that subscribers be allowed to add additional system-owned equipment under their current contract terms. Subscribers should not be forced to sign new contracts or renew existing contracts. Subscribers would be responsible for installation fees when adding equipment.

- ***Factual and Policy Issues:***

If an agency uses system-owned equipment and wants to add additional equipment during the term of the contract, it is unlikely they would desire a mix of system owned and agency owned hardware. As well, many smaller agencies (non-chain) continue to lease hardware from the systems because it simplifies service and support.

Secondary contracts for additional equipment also include productivity agreement clauses. Consequently, they significantly interfere with an agency's ability to switch systems or use multiple systems because they can increase agency expenses.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary to allow subscribers greater flexibility to choose their preferred booking channel.

- ***Cost/Benefit Estimates:***

Subscribers would benefit because they would only have one contract per CRS, which would simplify changeover to another CRS or booking channel.

11. PRODUCTIVITY PRICING

Rule:

Section 255.8(b) – no system may directly or indirectly impede a subscriber from obtaining or using any other system.

Government Proposal:

Limit or stop systems from providing financial incentives to subscribers

Comment Requested:

Yes – comment on proposals that will prohibit or limit use of productivity pricing.

Air Canada Position:

Air Canada proposes that productivity pricing must be eliminated since it indirectly impedes a subscriber from obtaining or using another system or alternative method of booking. Also, as we have established earlier in this submission, productivity pricing also encourages the use of passive bookings by travel agents, to the detriment of airlines.

- ***Factual and Policy Issues:***

The systems fund subscriber bonuses with revenue obtained from airline booking fees. Productivity pricing was originally used to offset the cost of system-owned equipment. However, productivity pricing is now included even if subscribers own their own equipment. Systems no longer include minimum use clauses in subscriber contracts, but continue to provide booking credits (revenue sharing). Productivity pricing has not led agencies to more efficient use of systems but encourages agencies to use one system for all of their bookings (revenue sharing on a sliding scale). Systems have circumvented the CRS Rules, which prohibits minimum use clauses by making the cost of non-use prohibitive.

Productivity pricing harms consumers directly and indirectly. It may keep travel agents from booking the best fares for their customers, and increases airline costs by preventing airlines from using alternative electronic means of communicating with travel agencies.

Tighter rules are needed to prevent systems from providing financial incentives for bookings.

In addition, productivity payments also encourage subscribers to create additional, inefficient bookings including: passives, fictitious, duplicate and churn. These bookings add fees and costs for the airline and consumer with little or no benefit to the distribution process.

- ***Detailed Information on Necessity of the Rule:***

The rule is necessary to close the loophole that allows CRSs to indirectly impede subscribers from obtaining or using any other system. As long as systems have market power over the airlines, they can continue to fund productivity pricing benefits by increasing airline costs that in turn increase fares paid by passengers.

- ***Cost/Benefit Estimates:***

In the past, travel agencies were responsible for paying for CRS equipment (hardware and circuits) and it is only in the past decade that the productivity model has evolved. By returning to the original business model, agencies will again take the financial responsibility for a tool that provides value to their business, and airlines will be unburdened of the additional costs created by productivity based pricing agreements.

12. TYING OF MARKETING BENEFITS WITH SYSTEM SUBSCRIPTIONS

Rule:

Section 255.8(d) – prohibits system owner airlines from tying override commissions with the agency's use of the airline's system. In the last DOT proceeding, the rule was not extended to cover other marketing benefits that an airline could provide (e.g. VATS, AD75's, waivers and favours, etc.)

Government Proposal:

To ban airlines from denying travel agencies access to their **corporate discount fares** when not using the system affiliated with the airline offering the fare. The government wishes to explore whether an effective rule prohibiting tying practices is possible.

Comment Requested:

Yes - Whether comparable Canadian rules on tying are effective (item 32).

Should airlines be able to offer agencies higher commission/benefits if they use a system that is lower in cost for the airline? Could a rule be adopted to allow this but not cause airlines to use their dominance in regional markets to compel agencies to use a particular system?

Air Canada Position:

Air Canada has no experience in this matter and therefore is not in a position to comment.

13. SUMMARY OF GOVERNMENT PROPOSED RULE CHANGES

In summary, Air Canada proposes the following changes to the CRS Rules:

Area under Discussion	Proposed Change
1. Scope of the Rules	Apply rule changes to both airline and non-airline owned systems
2. Definitions a) System b) System Owner c) Subscriber	a) Exclude Internet sites used by travel agencies b) Increase ownership interest to qualify as system owner to 25 to 34% c) Strike the word "neutral" when describing a travel agency
3. Third Party Hardware and Software	Readopt the existing rule but stop systems from blocking travel agencies using system-owned equipment from accessing other booking systems
4. Restricting All Airlines Choice of System Usage	Eliminate the requirement for all airlines to participate equally in all systems (parity clauses in participating carrier agreements)
5. Mandatory Participation Rule for System-Owner Airlines	Eliminate the mandatory participation rule
6. Rules Barring Display Bias a) Maintaining prohibition against display bias b) Screen padding	a) No specific proposal put forth b) Consider various options submitted by airlines and systems

c) Biasing software provided by airlines d) Travel agency displays	c) Prohibit airlines from providing software to agencies that would bias the display in favour of that airline d) No specific proposal put forth
7. Equal Functionality	Readopt the rules without change
8. Booking Fees a) Ending prohibition against discriminatory booking fees b) Zero Fee Proposal c) Proposals Requiring Reasonable Fees d) Excluding transaction from booking fees e) Booking fee bills	a) Allow airlines to negotiate system fees b) No specific proposal put forth c) No specific proposal put forth d) No specific proposal put forth e) No specific proposal put forth
9. Booking and Marketing Information a) Should type of data be restricted b) Should fees be limited	a) Yes b) No specific proposal put forth
10. Travel Agcy Contracts a) Maximum Term b) Fixing Damages (Liquidated damages) c) Travel Agency Equipment Additions	a) Consider one of three options – readopt existing rule; shorten maximum term to three years; adopt EU rule b) Limit subscriber damages for early termination on system contracts c) Prohibit multiple contracts when an agency adds equipment
11. Productivity Pricing	Limit or stop systems from providing subscriber incentives
12. Tying Marketing Benefits	Ban airlines from tying agencies to systems by denying marketing benefits

CONCLUSION

In conclusion, we feel that the Notice is issued at a very opportune time. The Internet has offered new opportunities to streamline and improve the distribution of airline services directly to consumers and travel agents. The dynamics of this new technology has facilitated the introduction of new and more cost efficient distribution channels for the first time in over ten years, which will ultimately benefit the consumer. The revised CRS Rules should encourage all players in the industry to explore new distribution models to optimize the potential of this tool. An airline's distribution system is a key element of its competitiveness.

In the future, the necessity of having any CRS Rules may be revisited considering that competitive market forces may better govern the relationship amongst the key players of airline distribution. In the meantime, we are pleased to participate in this U.S. DOT Rulemaking Process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Baker", is written over a horizontal line.

John M. Baker
Senior Vice President and General Counsel

March 12, 2003